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DEPARTMENT OF COMMERCE

International Trade Administration

A-570-890

Wooden Bedroom Furniture from the People's Republic of China: Notice of Court Decision Not in Harmony with Final Scope Ruling and Notice of Amended Final Scope Ruling Pursuant to Court Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: On March 6, 2013, the United States Court of International Trade (“CIT” or “the Court”) sustained the Department of Commerce’s (“the Department”) final results of second remand determination, which construed that the scope of the order¹ excludes Legacy Classic Furniture, Inc.’s (“Legacy”) Heritage Court Bench pursuant to the CIT’s remand order in Legacy Classic Furniture. v. United States, Court No. 10-00352, Slip Op. 12-121 (September 19, 2012) (“Legacy II”).² Consistent with the decision of the United States Court of Appeals for the Federal Circuit (“CAFC”) in Timken Co. v. United States, 893 F.2d 337 (Fed. Cir. 1990) (“Timken”), as clarified by Diamond Sawblades Mfrs. Coalition v. United States, 626 F.3d 1374 (Fed. Cir. 2010) (“Diamond Sawblades”), the Department is notifying the public that the final judgment in this case is not in harmony with the Department’s final scope ruling and is amending its final scope ruling on Legacy’s Heritage Court Bench.³

EFFECTIVE DATE: March 16, 2013

¹ See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture from the People’s Republic of China, 70 FR 329 (January 4, 2005) (“WBF Order”).

² See Final Results of Redetermination Pursuant to Remand, Court No. 10-00352, dated January 4, 2013 (“Remand Results II”).

³ See Memorandum regarding Wooden Bedroom Furniture from the People’s Republic of China: Scope Ruling on Legacy Classic Furniture, Inc.’s Heritage Court Bench, dated November 22, 2010 (“Final Scope Ruling”).

FOR FURTHER INFORMATION CONTACT: Lori Apodaca, AD/CVD Operations, Office 4, Import Administration – International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone (202) 482-4551.

SUPPLEMENTARY INFORMATION:

Background

On June 16, 2010, Legacy requested a ruling by the Department to determine whether the Heritage Court Bench, an item it imports and describes as a bench, is outside of the scope of the WBF Order. In the Final Scope Ruling, the Department stated that it was required to look beyond the factors provided under 19 CFR 351.225(k)(1) because the descriptions of the merchandise were not dispositive. Accordingly, the Department considered the five factors set out in 19 CFR 351.225(k)(2) (“(k)(2) factors”) and concluded that the Heritage Court Bench is covered by the scope of the WBF Order. Legacy appealed the Final Scope Ruling. In Legacy I,⁴ the Court affirmed the Department’s determination that the factors at 19 CFR 351.225(k)(1) were not dispositive, but held that the conclusion made by the Department regarding the five (k)(2) factors was not supported by substantial record evidence and, therefore, must be set aside and reconsidered. Thus, the Court ordered the Department to reconsider each of the five factors set out in 19 CFR 351.225(k)(2). In response to the Court’s remand, the Department issued its Remand Results⁵ determining that the Heritage Court Bench is covered by the scope based on the (k)(2) factors. In Legacy II, upon review of the Remand Results, the Court revisited its conclusion regarding the 19 CFR 351.225(k)(1) factors and ordered the Department to reconsider whether the 19 CFR 351.225(k)(1) factors are dispositive in determining whether the Heritage

⁴ Legacy Classic Furniture, Inc. v. United States, 807 F. Supp. 2d 1353 (Ct. Int’l Trade 2011) (“Legacy I”).

⁵ See Final Results of Redetermination Pursuant to Remand, Court No. 10-00352, dated March 22, 2012 (“Remand Results”).

Court Bench is covered by the scope of the WBF Order.⁶ The Court also held that the Department's determination regarding the (k)(2) factors was unsupported by substantial evidence.⁷ Pursuant to the Court's order in Legacy II, in Remand Results II, we determined that the Heritage Court Bench is excluded from the scope of the WBF Order.⁸ The CIT sustained the Department's Remand Results II on March 6, 2013.⁹

Timken Notice

In its decision in Timken, 893 F.2d at 341, as clarified by Diamond Sawblades, the CAFC has held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended ("the Act"), the Department must publish a notice of a court decision that is not "in harmony" with a Department determination and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's March 6, 2013, judgment sustaining the Department's Remand Results II construing the scope of the WBF Order as excluding Legacy's Heritage Court Bench, constitutes a final decision of that court that is not in harmony with the Department's Final Scope Ruling. This notice is published in fulfillment of the publication requirements of Timken. Accordingly, the Department will continue the suspension of liquidation of Legacy's Heritage Court Bench from the People's Republic of China pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision. The cash deposit rate on Legacy's Heritage Court Bench will be zero percent.

Amended Final Scope Ruling

Because there is now a final court decision with respect to Legacy's Heritage Court Bench, the Department amends its Final Scope Ruling and now finds that the scope of the WBF

⁶ See Legacy II, Slip Op. 12-121 at 15-21.

⁷ Id. at 14-15.

⁸ The Department noted in Remand Results II that it was conducting the remand respectfully under protest. See Viraj Group, Ltd. v. United States, 343 F.3d 1371 (Fed. Cir. 2003).

⁹ See Legacy II.

Order excludes Legacy's Heritage Court Bench. The Department will instruct U.S. Customs and Border Protection ("CBP") that the cash deposit rate on Legacy's Heritage Court Bench will be zero percent. In the event the CIT's ruling is not appealed or, if appealed, upheld by the CAFC, the Department will instruct CBP to liquidate entries of Legacy's Heritage Court Bench without regard to antidumping duties, and to lift suspension of liquidation of such entries.

This notice is issued and published in accordance with section 516A(c)(1) of the Act.

Paul Piquado
Assistant Secretary
for Import Administration

Dated: March 14, 2013.

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